

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.759 of 2015**

Arising Out of PS. Case No.-443 Year-2012 Thana- BARAUNI District- Begusarai

Md. Bittu @ Wasim Akram Son of Md. Ishak, resident of village - Bihat Sudi
Asthan, P.S. - Barauni, District - Begusarai.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant	:	Mr. Vikram Deo Singh, Advocate Mr. Braj Bhushan Poddar, Advocate
For the Respondent	:	Smt. S.B.Verma, APP
For the Informant	:	Mr. Mritunjay Kumar, Advocate Mr. Arjun Prasad, Advocate

**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH)**

Date : 03-04-2023

The appellant has preferred this appeal under section 374(2) of the Code of Criminal Procedure against the judgment and order dated 06.07.2015 and 15.07.2015 passed by the learned Trial Court in Sessions Trial No. 429 of 2013, whereby and whereunder the appellant Md. Bittu @ Wasim Akram has been convicted and sentenced as under :-



Convicted under Sections	Imprisonment	Fine (Rs.)	In default of fine
364/149 of the I.P.C.	Imprisonment for life	5,000/-	S.I. for one year
120-B/149 of the I.P.C.	Imprisonment for life	5,000/-	S.I. for one year
302/149 of the I.P.C.	Imprisonment for life	5,000/-	S.I. for one year
201/149 of the I.P.C.	R.I. for seven years	5,000/-	S.I. for one year
Section 27(1) of the Arms Act	R.I for three years	5,000/-	S.I. for one year

2. This appellant, during the pendency of this appeal, had claimed his juvenility as on the date of occurrence by making an application vide Interlocutory Application No. 1 of 2022. This appeal was earlier taken up along with batch of other criminal appeals, namely, **Criminal Appeal (DB) No.790 of 2015 (Md. Chand @ Chandelwa @ Chand Miyan and Addu Mian @ Md. Azad @ Addu @ Md. Azad Miyan @ Md. Ajad vs. The State of Bihar)**, **Criminal Appeal (DB) No. 716 of 2015 (Saukat Miyan vs. The State of Bihar)**, **Criminal Appeal (DB) No. 779 of 2015 (Md. Abdul Rajjak @ Nepali @ Abdul Rajjak @ Nepali Miyan vs. The State of Bihar)**, **Criminal Appeal (DB) No. 810 of 2015 (Md. Yunus @ Md. Yunis vs. The State of Bihar)**, **Criminal Appeal (DB) No. 349 of 2016 (Barkat Mian vs. The State of Bihar)** and **Criminal Appeal (DB) No. 1260 of 2016 (Perwej Alam @ Perwez Mian vs. The State of Bihar)** arising out of the same judgement and order of the learned Trial Court, which is under challenge in the present appeal, namely.

3. As the appellant claimed his juvenility, the present appeal was separated for the purpose of final hearing, whereas other appeals were heard and came to be disposed of by common judgement and order dated 11.10.2022. In the present



appeal, upon considering the appellant's claim of his juvenility and other documents, which were produced earlier, this Court, had passed the following order on 15.11.2022 by referring the question of the appellant's juvenility to the Juvenile Justice Board, Begusarai (henceforth for short 'the J.J. Board') for determination:-

“An Admission Register of Primary School, Chakia, Punarbas, Barauni, Begusarai, has been produced by the State before this Court in compliance of this Court's order dated 28.07.2022.

Considering the facts and circumstances, it is considered desirable to refer to the Juvenile Justice Board, Begusarai, to determine the appellant's claim of his juvenility, who has been convicted by the trial court in connection with Barauni (Chakia) P.S. Case No. 443 of 2012, giving rise to Sessions Case No. 429 of 2013 and is presently in custody in Jubba Sahani Central Jail, Bhagalpur.

Let the order be communicated to the Juvenile Justice Board, Begusarai, and the Superintendent, Jubba Sahani Central Jail, Bhagalpur, forthwith for making necessary arrangement and expediting appellant's claim that he was a juvenile on the date of occurrence, i.e., 09.12.2012.

List this appeal on receipt of the finding of Juvenile Justice Board in terms of the aforesaid order.



Let the admission register be returned to learned State counsel.”

4. This Court has received a report from the learned Principal Magistrate, ‘the J.J. Board’ through letter no. 2448 dated 25.11.2022, the relevant portion of which reads as under :-

“After perusal of admission register of Utkramit Madhya Vidyalay, Chakiya Punarvas, Barauni and taking inquiry evidence of the head master of school concerned, this board satisfied that the admission register produced and exhibited is genuine one and kept in proper custody of school. The entries are found to be in order. The date of occurrence of Barauni PS Case NO. - 443 of 2012 is 09.12.2012. The date of birth of CCL-X is 12.05.1998. On counting, the age of CCL-X on the date of occurrence was fourteen years six months and twenty seven days which is less than the minimum age of majority.

Finding

The CCL-X is declared juvenile since his age was fourteen years six months and twenty seven days on the date of occurrence. The miscellaneous case is accordingly disposed of.”

5. It is evident thus from the report of ‘the J.J. Board’ that the appellant has been found to be below 16 years of age as on the date of occurrence, i.e., 09.12.2012. It is manifest



from the lower court's records (LCR) that the appellant has remained in custody since 16.12.2012 and has thus spent about 10 years and six months in custody in connection with the criminal cases in which he stands convicted and sentenced by the impugned judgment and order of the trial court, as noted above, which are under challenge in the present appeal.

6. We, at this juncture, deem it proper to notice relevant facts of the case, which have been noted at length in Criminal Appeal (D.B.) No. 790 of 2015 (*Md. Chand @ Chandelwa @ Chand Miyan & Anr. Vs. The State of Bihar and other analogous case*) (supra).

7. One Subodh Kumar (P.W.-16), the father of the deceased is the informant of the case, on whose written report dated 14.12.2012, the aforesaid Barauni (Chakia) P.S. Case No. 443 of 2012 came to be registered. According to him, on 09.12.2012 at 7.45 p.m., his son was getting repeated calls on his mobile phone whereafter he took his meal in a hurry and left the home, hurriedly. He was carrying with him a mobile phone with a SIM bearing No. 9608251421.

8. The deceased is said to have disclosed to the informant that, as usual, he was going to the place of his partner Sanjeev Singh and further he would sleep at his shop, as was his



routine. [We must mention here for clarity that from the prosecution's case, as disclosed in the First Information Report (F.I.R, for brevity), it is evident that the name of the deceased was Sanjeev Kumar Singh whereas his partner's name has been described in the F.I.R. as Sanjeev Singh, son of Sudhir Singh. The said Sanjeev Singh has been examined as P.W.-4 with his name as "Sanjeev Kumar Singh", son of Sudhir Singh. It is evident from the *fardbayan* and evidence on record that the names of the deceased and his partner (P.W.-4) were similar/identical].

9. The deceased did not return on the next date i.e. 10.11.2012 and since the informant could not get any clue about the deceased, he reported to the police in the evening of 11.11.2012 stating therein that his son (the deceased) had started a business dealing with scraps which was being objected to by the persons dealing with the same business, namely, Shaukat Miyan (an appellant), his partner Abdul Rajjak @ Nepali (an appellant), Barkat Mian (an appellant), Addu Mian @ Azad (an appellant) and Md. Chand @ Chandelwa, who acting in conspiracy with each other appeared to have abducted the deceased with an intention of killing him.

10. The informant (P.W-16) had filed a missing report to the police on 11.12.2012 to the effect that his son was



missing from the night of 09.12.2012 from his scrap shop. He disclosed that despite all efforts having been made, he could not locate his son. He disclosed in the F.I.R. that from the time when the deceased had started the scrap business, Shaukat Miyan (a co-convict who died during the pendency of his appeal before this Court) and Md. Abdul Rajjak @ Nepali (an appellant) had been threatening him of dire consequences. They had threatened the informant that if his son (the deceased) continued with his business in scraps, he would be killed.

11. Restatement of the informant was recorded by the police. Investigation by the police led to arrest of the persons named in the F.I.R. Md. Bittu @ Wasim Akram (the appellant herein) who is said to have made confessional statement before the police to the effect that he had come in contact with Parwej Alam [appellant of Cr. Appeal (DB) No. 1260 of 2016] who was engaged with other persons of the village in dealing with scraps, stolen from the Barauni Thermal Power Station ('the BTPS', for brevity). He is said to have further disclosed to the police as to how conspiracy was hatched up to kill the deceased and in furtherance of the said conspiracy, the appellant, Md. Parwej Alam, Md. Guddu, Md. Abdul Rajjak, Md. Chand @ Chandelwa, Addu Mian @ Azad and Md. Yunus had killed the deceased.



12. According to the said confessional statement made before the police by the appellant/deceased was assaulted and shot dead by them. When the deceased died, his dead body was lifted and thrown near the southern boundary of 'the BTPS', and thereafter the dead body was concealed by putting it in a ditch and covering the same with stone chips. His *Gamcha*, muffler, shawl and slippers were also there, which he was wearing. Thereafter, he and others came out of 'the BTPS' by scaling over its boundary wall and went back to their respective places.

13. He also disclosed that the mobile phone of the deceased was also flung away somewhere in a ditch, near the place where he was killed. His SIM card was taken out of the mobile phone which was also thrown away. The firearm i.e. the pistol used by him for shooting was also thrown away by him in the same ditch filled with water. The said confessional statement was recorded by the police on 16.12.2012 at 3:30 pm. Addu Mian @ Md. Azad, Md. Chand @ Chandelwa, and one Nehru Kumar @ Tonish Kumar also made confessional statements before the police of same nature as was disclosed by the appellant in his confessional statement.

14. The persons, who had confessed their guilt during the course of investigation, namely, the appellant, Addu



Mian @ Azad, Md. Chand @ Chandelwa and Nehru Kumar @ Tonish Kumar were taken to the place which was disclosed by them to be the place where the dead body of the deceased was concealed. The police officials and the family members of the deceased reached at the place as disclosed by the aforesaid persons i.e. the abandoned pump house on the northern side of 'the BTPS' switch yard. All the four accused persons were thereafter separately asked to indicate the place where the dead body was buried. All of them separately pointed towards the same place. The dead body of the deceased was recovered from the place, based on the confessional statements made separately by the accused persons before the police. Inquest report was prepared. Torn shirt of the deceased, his slippers, the inner which he was wearing were identified by the informant i.e. the father of the deceased and family members of the deceased.

15. The Officer, who prepared the inquest report, found gun shot injuries on the person of the deceased and the face of the deceased badly smashed. The seizure list was prepared of the articles seized from the said place in the presence of seizure list witnesses, namely, Ram Nandan Singh P.W.-3 and Pankaj Kumar Singh, P.W.-1.



16. Initially, the F.I.R. was registered for the offence punishable under Sections 364, 120B/32 of the Indian Penal Code ('I.P.C.' for short) but subsequently Sections 302 and 201 of the I.P.C. were added by the order of the learned Chief Judicial Magistrate, Begusarai consequent upon the recovery of the dead body of the deceased. On completion of investigation, the police submitted its charge-sheet, whereafter, cognizance was taken by the learned Chief Judicial Magistrate, Begusarai on 16.03.2013.

17. The charges were framed against the appellant and others for commission of offence punishable under Sections 363/34, 302/34, 201/34 and Section 120B of the Indian Penal Code.

18. As the appellant and others pleaded innocence, they were put to trial. At the trial, the prosecution examined 18 witnesses. Inquest report and the postmortem report were proved at the trial. The prosecution relied on the call detail record at the trial which were exhibited as Exhibits to substantiate the prosecution's case.

19. After closure of the evidence of prosecution witnesses, the evidence emerging against the accused were explained to the appellant by the learned Trial Court, seeking his



explanation, if any. The appellant denied to have given any confessional statement before the police. He claimed that they were falsely implicated.

Evidence of Prosecution Witnesses

20. Evidence of the informant (P.W.-16) is most crucial on various aspects and, therefore, his evidence is being noted first.

21. While supporting the prosecution's case, as disclosed by him, in his written report to the police on 13.12.2012, PW-16 deposed that as the deceased did not return on 10.12.2012, he started searching for him and during that course, he went to the shop where the deceased would usually sleep in the night but found the shop closed. When on 11.12.2012 also, the informant could not get any trace about the deceased, he lodged a missing report with the police on 11.12.2012. He further, deposed that on 13.12.2012, Parvez had mysteriously fled away seeing the informant. He proved motive behind the occurrence as the business rivalry in dealing with the scraps stolen from 'the BTPS'.

22. He proved the recovery of the dead body of the deceased from the place indicated by four persons, namely, Addu, Md. Bittu (the appellant), Chandelwa and Tonish Kumar. Recovery of the dead body was made after these persons



separately pointed towards the place where the dead body of the deceased was concealed. He deposed that wife, brother-in-law and others who were present there, had also identified the dead body of the deceased. He identified the persons put on trial, namely, Shaukat, Nepali, Md. Bittu (the appellant), Addu, Chandelwa and Yunus.

23. P.W.-1, Pankaj Kumar Singh, is the seizure list witness. He proved the seizure list which was prepared in his presence. Based on the information provided by Addu, Bittu, Chandelwa and Nehru, dead body of the deceased was recovered which was concealed in the premises of 'the BTPS'. He supported the prosecution's case of business rivalry as the motive behind the occurrence. He further deposed that on 09.12.2012, in the morning, he had seen Shaukat, Nepali, Parvez, Guddu, Chandelwa, Dhananjay, Bagadwa, Chand Mian and Nehru standing near the scrap shop of Nepali who were talking to each other. He identified the accused, namely, Shaukat, Nepali, Yunus, Bittu, Barkat and Chandelwa in Court.

24. P.W.-6 Siyaram Singh, in his deposition has supported the evidence of P.W.-1, both of whom were together on 09.12.2012 at 10:00-11:00 O'clock, when they had seen Shaukat, Nepali, Addu, Md. Bittu (the appellant), Nehru, Parvez,



Dhananjay, Guddu, Barkat, Yunus conversing together near the scrap shop of Shaukat. During the course of trial, he firstly identified Yunus, Barkat Nepali, Shaukat, Addu but subsequently he described Addu as Yunus and Yunus as Addu. He correctly identified other accused persons present in the dock.

25. P.W.-2, Binod Singh, in his deposition proved recovery of the dead body of the deceased who had identified the dead body of the deceased and testified that he had identified the shirt of the deceased. It is the evidence of P.W.-2 that he had gone to pick up in a jeep, Santosh Kumar (PW-8) who was coming from Patna and bring him to his house at Malhilupur. On way to his house, when he reached on the soling road near 'the BTPS', he had seen Dhananjay Mishra, Nehru and the deceased together, with the aid of Jeep lights who were going northwards. Apparently, he is a witness to the deceased in company of the accused Dhananjay Mishra and Nehru. He is also a witness to the recovery of the dead body of the deceased from the place where it was found buried.

26. It will be useful to refer at this juncture to the evidence of P.W.-8 (Santosh Kumar) who deposed that he had gone to Patna and had returned from Patna in the night of 12.12.2012 by Danapur-Howrah train. He had deboarded the train



at Hathidah Railway Station at about 11.30-12.00 O'clock in the night. At Hathidah Railway Station, his co-villager Binod Singh (P.W.-2) had come to receive him in a Jeep. At about 1.00 am, he saw, with the headlights of the Jeep, Nehru @ Tonish, Dhananjay Mishra with the deceased who were going towards gate of 'the BTPS'. P.W.-8 further deposed in his evidence that he had accompanied the informant (P.W.-16) to the place where the police were present with four persons, namely, Md. Bittu (the appellant), Addu, Chandelwa @ Chand and Nehru @ Tonish and based on their disclosure, the police had recovered the dead body.

27. He further deposed that at 11:30 am on the same day, the police had recovered blood stained bricks, a SIM card, blood stained grass and stains of blood from the plaster on the nearby boundary wall. The police had prepared a seizure list in the said process. He proved his signature on the seizure list which was marked as Exhibit-4. He identified all the accused persons, they being his co-villagers, who were present at the trial. When he was asked in the cross-examination to show the railway ticket to support his evidence that he had come in a train from Patna to Hathidah, he expressed his inability as that was not available with him.



28. P.Ws. 2 & 8, had thus, seen the deceased last with the aforesaid accused persons near the boundary wall of 'the BTPS' moving towards its gate as per their depositions at the trial.

29. P.W.-3, Ram Nandan Singh a co-villager of the deceased also proved the recovery of the dead body of the deceased and seizure of Muffler, blood stained towel, inner collar, piece of shirt etc. by the police and proved his signature on the seizure list, exhibited as Exhibit 1/1. He also proved recovery of a Nokia mobile phone in the night of 16.12.2012 from the possession of Addu Mian. He further deposed that on 09.12.2012 at about 11.45-12.00 in the night, when he was going to his house alongwith one Ashok Singh (PW-15), resident of Barbigha from 'the BTPS', they had seen seven persons, namely, Md. Yunus, Barkat, Md. Bittu (the appellant), Addu Mian, Chandelwa and Guddu and Parwez moving towards eastern of the B.T.P.S. In response to a query made by Ashok Singh (PW-15), P.W.-3 had told him that they (the accused persons) were thieves and they would commit theft in 'the BTPS'. He supported the prosecution's case that the deceased was being threatened for starting his business in the scraps stolen from 'the BTPS' by Shaukat and Nepali Mian, who were already into the said business. In his cross-examination, he disclosed that he was a security guard in



‘the BTPS’ and on the date of occurrence, after having been relieved from his duty, he had proceeded from there and he had met Ashok Singh (PW-15) at the Bus-stand. P.W.-3, thus, is apparently a witness of presence of Yunus, Barkat, Md. Bittu (the appellant), Addu, Chandelwa, Guddu and Parwez near the place of occurrence.

30. Evidence of P.W.-15 deserves to be read with evidence of P.W.-3 who were there together, coming from ‘the BTPS’. He deposed that when he got down at 10:00-10:15 pm in the night at ‘the BTPS’ Bus-stand, he saw P.W.-3, Ram Nandan Singh coming in a bicycle. He went to the quarter of his brother-in-law (*Bahnoi*, the informant of the case) in the campus of ‘the BTPS’. His evidence is in line with evidence of P.W.-3 to the effect that they had seen the above named persons i.e. Parwez, Guddu, Yunus, Barkat, Chandelwa, Addu and Md. Bittu (appellant) who were identified by P.W.3 and had told him that they were thieves and they might be there for committing theft. He had slept at the house of the informant that night he is a witness to the recovery of the dead body of the deceased by the police from the campus of ‘the BTPS’ after digging the place. He identified Md. Bittu (the appellant), Chandelwa and Addu who were present at the time of examination-in-chief. He also



supported the prosecution's case that from the place of occurrence, muffler, slippers and a wrapper were recovered. Further, a SIM card for a mobile phone, blood stained brick, blood stained soil, blood stained plaster were also recovered. A seizure list was prepared on which he had put his signature. Based on his deposition, Exhibits-2/5 and Exhibits 2/6 were marked. In cross-examination, however, he said that the seized items were not put for T.I. parade.

31. P.W.-4, Sanjeev Kumar Singh was the partner of the deceased. He supported the prosecution's case about the business rivalry between the deceased and the persons put on trial, who were running a trade dealing with scraps for the last 15 years. He further deposed that in the night of 09.12.2012, he had gone to Kagaria Rahimpur Tola and at about 8.15 pm, the deceased had informed him that 'the goods' were likely to reach. The telephone line, however, had got disconnected. The deceased used to sleep in the medical-shop of PW-4 but on 10.12.2012, in the morning, when he (P.W.-4) returned to his village, he did not find the deceased in the shop. Evidence of P.W.-4 supports the prosecution's case of business rivalry and thus a motive behind commission of offence.



32. P.W.-5, Manoj Mishra is a witness to seizure of a Nokia Mobile with a Voda SIM from the right-pocket of Wasim Akram @ Md. Bittu's (the appellant's) pant in his presence. He is a witness to the seizure list marked as Exhibit-2/2 in relation to recovery of Nokia mobile phone with a vodaphone SIM.

33. P.W.-7 is a witness to the recovery of the dead body of the deceased from the campus of 'the BTPS'. He had also put in his signature on the inquest report which has been exhibited as Exhibit 2/3. He deposed that after hearing the noise, he had come to the place of occurrence.

34. P.W.-9, a *Dafadaar*, is witness to the arrest of Chandelwa, Nehru @ Tonish, Md. Bittu (the appellant) and Addu and recovery of the dead body of the deceased based on their confessional statement made before the police. In his cross-examination, he deposed that no one's statement was taken at the place from where the recovery of the dead body was made.

35. P.W.-10, a *Chowkidar*, testified the arrest of Md. Chand @ Chandelwa, Nehru @ Tonish, Bittu and Addu and deposed that based on their confessional statement made before the police officials, they were taken to the place near pump house of 'the BTPS', from where the dead body of the deceased was



recovered. P.W.-10 was one of them who had participated in exhuming the dead body, according to his evidence.

36. P.W.-11, Balmiki Singh, is another *Chowkidar* is also a witness to the recovery of the dead body of the deceased upon disclosure made by Chand @ Chandelwa, Nehru @ Tonish, Md. Bittu (the appellant) and Addu in their separate confessional statements made before the police during investigation. He had also participated in digging up the place leading to recovery of the dead body.

37. P.W.-12, Dr. Hari Narayan Singh, who was posted as Deputy Superintendent, Sadar Hospital, Begusarai had conducted the postmortem on the dead body of the deceased whereas P.W.-13, Dr. Raju was posted as Medical Officer on the said date at the Sadar Hospital, Begusarai. They proved following external and internal injuries on the body of the deceased based on the postmortem report:-

“Whole body Swollen foul smelling maggot.

Face distuted due to multiple trauma.

Skull fractured.

Lacerated wound: 6”X6” X deep to chest cavity on right side of chest.

lacerated wound - 2”X1” deep to chest cavity on right side back below right scapula margin inverted with charring around wound.



lacerated wound - 1/2" X1" X deep to abdominal Cavity on right lumber region of back, margin inverted with black charring, around wound.

lacerated wound - 1/2"X2"X deep to abdominal cavity on right side interior abdominal way.

On Dissection

Dark clot in chest Cavity, right lungs and vessels lacerated, Dark blood clot in abdominal cavity with multiple gut perforations. Stomach and bladder-empty.

Cause of death:

Haemorrhage and shock due to above injuries caused by firearm time since death: within seven days"

38. This witness has also testified that Dr. Hari Narayan Singh (PW-12) was present at the time of postmortem as an observer and he was Deputy Superintendent of the Hospital. In cross-examination (PW-13) he opined that injuries found on the dead body was caused by firearms but some were caused by non-firearms weapon also. In his cross-examination, this witness has also opined that injury No. 1 might have been caused by hard and blunt substance and it was sufficient to cause the death of deceased. PW-13 has further deposed in his cross-examination that he had not found bullet inside the dead body. In cross-examination in para-15 PW-13, he further deposed that a dead body starts decomposing after 36 hrs of death.

39. The Investigating Officer was examined as P.W.-17. Apart from proving the missing report in respect of the deceased, received on 11.12.2012, he proved registration of F.I.R.



on 14.12.2014. He deposed in his evidence that he had received the CDR of the mobile number belonging to the deceased and had found that on 09.12.2012, there was a phone call on the deceased's mobile phone from another mobile phone bearing No. 9570624311 for a duration of 295 seconds from 19:25 to 23:20. Further, the deceased had talked on the mobile number 95768946756 for 248 seconds at 20:02 O'clock. The mobile number of the victim was 9608251421.

40. Upon inquiry, it was learnt that the said phone number 9570624311 was being used by Md. Bittu (the appellant). Based on the analysis of Call Detail Reports (CDR) and Consumer Application Forms (CAF), searches and raids were conducted and during the course of raid, Addu Mian was arrested. Subsequently, Chand @ Chandelwa, Nehru @ Tonish, Md. Bittu (the appellant) and Addu were also arrested. The four persons arrested were separately interrogated. They made their separate confessional statements, one by one (बारी बारी से), leading to recovery of the dead body of the deceased. He proved his signature on the inquest report as Exhibit-2/3, carbon copy of which was already marked as Exhibit-5.

41. Mr. Vikram Deo Singh, learned counsel appearing on behalf of the appellant has submitted that the



appellant has already remained in custody for more than 10 years and no punishment more than imprisonment for a term of three years can be passed against a juvenile under the then existing Juvenile Justice Board (Care and Protection of Children) Act, 2000 (for short 'the 2000 Act'). He further submits that no purpose would be served by remanding the matter to 'the J.J. Board' for passing an appropriate order. He has drawn our attention to Section 6 of 'the 2000 Act' to contend that this Court may exercise the same power, which the Board may exercise even if the finding of conviction recorded by the trial Court is upheld by this Court.

42. Upon perusal of the Trial Court records, we find that co-convict Addu Mian @ Md. Azad @ Addu @ Md. Azad Miyan @ Md. Ajad, Md. Chand @ Chandelwa and Nehru Kumar @ Tonish Kumar and the present appellant are said to have made their confessional statements before the Investigating Officer (P.W.17). From the evidence of Investigating Officer, it is manifest that the accused persons, who had made their confessional statement, had separately pointed towards the same place where the dead body was found concealed. The dead body of the deceased was identified by the father of the deceased (P.W. 16) and maternal uncle of the deceased (PW-15).



43. The Investigating Officer had recovered blood stained towel, a pair of slippers, white colour muffler and a piece of shirt, which the deceased was wearing. The recovery of the dead body of the deceased and other articles were made on the basis of the confessional statement of co-accused, namely, Addu Mian @ Md. Azad @ Addu @ Md. Azad Miyan @ Md. Ajad, Md. Chand @ Chandelwa and one Nehru Kumar @ Tonish Kumar and this appellant. The recovery of the dead body from the place, as indicated by this appellant and two other co-convicts, was proved by P.Ws. 15 & 16. The reasonings which have been assigned by this Court in the case of Md. Chand @ Chandelwa @ Chand Miya and Addu Mian @ Md. Azad @ Addu @ Md. Azad Miyan @ Md. Ajad in Cr. App. No. 790 of 2015 (Md. Chand @ Chandelwa) for while upholding their conviction recorded by the Trial Court applies fully in the case of the present appellant also.

44. Thus, the finding of conviction, as recorded by the trial Court, in our considered opinion, cannot be faulted with in the facts and circumstances of the case discussed above.

45. The sole question, which is required to be decided, is as to what order this Court is required to pass in the background of the fact declared that the appellant has been to be a juvenile by 'the J.J. Board' as on the date of occurrence, in the



light of various provisions under 'the 2000 Act', which was operative on the date of occurrence.

46. It would not be out of place to mention, at this Juncture, that the Juvenile Justice Care and Protection Act 2015 (henceforth for short 'the 2015 Act') came to be enacted subsequently and it has come into force with effect from 31.12.2015. Section 25 of 2015 Act, which begins with non-obstante clause provides that notwithstanding anything contained in this Act, all proceedings in respect of a child alleged or found to be in conflict with law pending before any Board or court on the date of commencement of this Act, shall be continued in that Board or the court, as if this Act (2015) had not been enacted. The said provision is being noted here to remind ourselves that this Court is required to pass appropriate orders in present case in terms of the then existing Act, i.e., 'the 2000 Act' only.

47. Whereas section 15 of 'the 2000 Act' delineates the order which may be passed regarding juvenile, section 16 mentions the orders that may not be passed against a juvenile. Section 15 (1) (g) of 'the 2000 Act' confers upon the Juvenile Justice Board a power to make an order directing the juvenile to be sent for a period of three years where the Board is satisfied on enquiry that a juvenile has committed an offence. The proviso to



Section 16 (2) of 'the 2000 Act' mandates that period of detention in case of juvenile shall not exceed, in any case, the maximum period provided under section 15 of the Act.

48. Section 7-A of the Act of 2000 reads as under:-

“[7-A. Procedure to be followed when claim of juvenility is raised before any court.—(1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an enquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

Provided that a claim of juvenility may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

(2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate order, and the sentence if any, passed by a court shall be deemed to have no effect.]”



49. Section 7-A of 'the 2000 Act' requires that whenever a claim of juvenility is raised before any Court or when the Court is of the opinion that an accused person was juvenile on the date of commission of the offence, the Court shall make an enquiry, take such evidence, as may be necessary so as to determine the age of such person, and record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be. Section 7A (2) mandates that if the Court finds a person to be a juvenile as on the date of commission of the offence under sub Section (1), it shall forward the juvenile to the 'J. J. Board' for passing appropriate order, and the sentence, if any, passed by the Court shall be deemed to have no effect.

50. Section 6(2) of 'the 2000 Act' confers upon the High Court and the Court of Sessions jurisdiction to exercise all powers as are conferred on the Juvenile Justice Board under the Act, when the proceeding comes before the said court in appeal, revision or otherwise.

51. Our attention has been drawn to the Division Bench decision of this Court in case of ***Dinanath Paswan Vs. The State of Bihar*** reported in **2009(2) PLJR 763** with special reference to paragraph 10 thereof, wherein this Court, after having taken notice of the period of incarceration of the appellant of that



case, who was held to be juvenile, instead of referring the matter to the Juvenile Justice Board for passing appropriate orders under Section 6 of ‘the 2000 Act’ exercised power under Sub Section (2) of Section 6 of ‘the 2000 Act’, and while confirming conviction, set aside the sentence awarded to the said appellant on account of its various provisions.

52. Accordingly, in the present case, while upholding the appellant’s conviction, as recorded by the Trial Court, we set aside the order of sentence imposed upon him exercising jurisdiction under Section 6(2) of ‘the 2000 Act’.

53. Let the appellant namely Md. Bittu @ Wasim Akram be released from custody forthwith, if not required in connection with any other case. The appeal though stands dismissed on the point of conviction, it stands allowed on the point of sentence as noted above.

54. The appeal stands disposed of accordingly.

(Chakradhari Sharan Singh, J)

(Rajiv Roy, J)

Jagdish/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	11.04.2023
Transmission Date	11.04.2023

